

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GRACIANO MEZA SANCHEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:16CV492
	)	
FRANK PERRY,	)	
	)	
	)	
Repondent.	)	

MEMORANDUM OPINION AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

This matter is before the Court *sua sponte* on Petitioner's failure to comply with this Court's Orders [Doc. #3, #4] entered on September 21, 2016, and November 3, 2016, ordering him to pay the \$5.00 filing fee in this action. For the reasons set out below, the Court recommends that this action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

This Court stayed this action for 30 days on September 21, 2016, and ordered Petitioner to submit the \$5.00 filing fee within the next 30 days. (Order to File and Stay [Doc. #3].) The Court warned Petitioner that failure to pay the fee would result in this action being dismissed without prejudice. The 30-day period has now expired, and Petitioner has not paid the filing fee. Further, the Court entered an additional Order on November 3, 2016, ordering Petitioner again to pay the \$5.00 filing fee within ten days and warning him again that the action would be dismissed for non-compliance. That ten-day period has now passed, and Petitioner has not paid

the filing fee. Petitioner has not had any further contact with the Court since filing this action in May 2016.

Under Federal Rule of Civil Procedure 41(b), “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b); see also Link v. Wabash R.R. Co., 370 U.S. 626, 629-32 (1962) (noting that federal courts have the inherent power to dismiss an action for failure to prosecute either sua sponte or on the motion of a party). “The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts.” Link, 370 U.S. at 629-30.

In the present case, Petitioner has failed to pay the filing fee and has failed to communicate with the Court. Absent compliance with the Court’s Orders the case cannot proceed. Petitioner has had over six months since the filing of this action to pay the \$5.00 filing fee. Because Petitioner is not communicating with the Court and has apparently ignored two Orders of the Court, this case should be dismissed. The Court recommends that the dismissal be without prejudice to Petitioner refiling the action on the proper forms and in compliance with the relevant statutory provisions.

IT IS THEREFORE RECOMMENDED that this action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

This, the 5th day of December, 2016.

/s/ Joi Elizabeth Peake  
United States Magistrate Judge